



July 10, 2008

John Auerbach
Commissioner
Massachusetts Department of Public Health
250 Washington Street
Boston, MA 02108-4619

RE: DPH Proposed Green Building DoN Guidelines

Dear Commissioner Auerbach:

The Massachusetts Hospital Association, on behalf of our member hospitals and health systems, appreciates this opportunity to provide comments on the Department's proposed guidelines for adopting the determination of need (DoN) guidelines for environmental and human health impact. At the outset, we would like to thank the Department for the collaborative process that it used to develop the initial set of proposed guidelines to be reflective of the current operational issues that come into play when any provider is considering a large capital project.

Massachusetts hospitals are committed to their most basic mission: caring for the patients and communities that they serve. Toward this mission, hospitals have developed many quality improvement initiatives and clinical practices that continue to meet the needs of patients and communities. In addition, Massachusetts hospitals also have developed alternative operational practices focusing on improving employee health and the environment. Hospitals have partnered with many groups, such as Health Care Without Harm and Hospitals for a Healthy Environment, on projects to reduce latex use, or to find alternative devices that do not use mercury. Most hospitals have a long history of instituting energy conservation measures throughout their facilities and more recently have developed "Green Teams" designed to spearhead and support environmentally friendly initiatives such as recycling and waste reduction, among others.

Another area in which hospitals have worked to protect the environment, as well as the health of our patients and employees, is the use and adoption of green building standards. Partnering with advocacy groups, MHA and hospitals throughout Massachusetts have included green building standards in developing their capital projects.

While hospitals have been very supportive of these standards, we have large concerns with the proposed DoN guidelines and how they are forcing a very prescriptive requirement with no recognition or allowance for current hospital environmental efforts around "going green." Specifically, the recent Public Health Council proposed changes for moving the compliance threshold in the guidelines from 38% to 50% for all capital projects raises several operational concerns that we feel can be better addressed in a different manner.

To that end, we respectfully provide the following comments and request the Department ensure that any changes to the guidelines take into account four important issues.

First, the goal of implementing the proposed guidelines effective October 1, 2008 (which will be formally released in August or September of 2008) is unrealistic and does not take into account the process providers go through in developing a capital needs project. Prior to filing a DoN application, providers spend several months working through architectural and engineering plans to finalize the Factor 5 reasonableness of expenditures and costs. This normally includes reviewing the costs associated with materials, contractors, disposal, and setting up architectural plans, among many others. Once these financial and operational issues are known, the application is filed with the state. For those providers now undergoing review, having a new set of guidelines issued with very little notice will require substantial changes to plans that have been in development for several months. While hospitals support the goals and principles under the Leadership in Energy and Environmental Design-Health Care (LEED-HC) or the Green Guide for Health Care (GGHC), they should not be unfairly affected by this very short notice. From an administrative viewpoint, small providers will face an additional financial burden. We would like to point out that the Department understood this issue related to issuing its new ED Diversion policy, making it effective January 1, 2009, recognizing the financial and operational costs in making the substantial operational changes needed to meet the new policy.

To that end, we recommend that the Department issue the guidelines effective for all new DoN applications on or after January 1, 2009. These requirements should not pertain to any existing projects or revisions to current projects that have been reviewed and approved by the Department prior to January 1, 2009.

Second, we are very concerned with the proposal that hospitals meet at least 50% (34 of the available 69 credits) of the available points in the Construction section of the LEED, GGHC, or other Department-approved best practice standards for all new construction and renovation projects. To reiterate, hospitals are committed to providing safe and effective care by using resources that are safe to our patients, our employees, and the communities that we serve. Therefore, we agree with one aspect of the proposal that all new applications for new construction should be required to meet the 50% criteria.

However, we strongly request that the Department provide that any renovation project only be required to meet 38% of the available points (which is 26 of the 69 available construction credits). Several of the current LEED/GGHC construction criteria may not be applicable to a renovation project. For example, there are several LEED points associated with site work, along with such other things as “water efficient landscaping”, which may not even be part of a renovation project. Similarly, there are three additional LEED points associated with “Building Re-use” in which a certain percentage of maintaining existing walls, floors, and roofs is required. The underlying need to renovate may very well be related to the need to expand and grow services, thus requiring the removal of walls, floors, and roofs. Forfeiting the opportunity to achieve a defined amount of LEED points for checklist criteria that is not applicable in a renovation project makes attaining substantial compliance impractical. Applying a 50% criterion to a renovation may very well require further changes throughout the hospital to meet the higher percentage; this could in turn result in a project being abandoned due to the additional costs and resources that this will add to any capital project. It will force many community providers to rethink their planned renovations – many of which are needed to ensure continued high quality care to patients and communities. **For these reasons, we urge the Department to change this portion of the guidelines to reflect that renovation projects must meet 38% of the criteria.**

Third, and critically important in these guidelines, there is very little recognition for those providers that have voluntarily implemented or are implementing several operational practices that meet other green building principles and other environmental friendly operational practices. Now that the Department is mandating that providers must meet specific green building criteria for their operations, many providers will have to rethink spending the time and resources on their other practices. We strongly believe that providers that continue to meet and exceed efforts to reduce solid waste, red bag waste, mercury containing equipment, as well as adopt Green Teams, should be able to request that the Department take these efforts into account during plan review. On plan review hospitals should be allowed to demonstrate how other current operations are meeting general green building or environmentally friendly principles, which can count toward the percentage threshold.

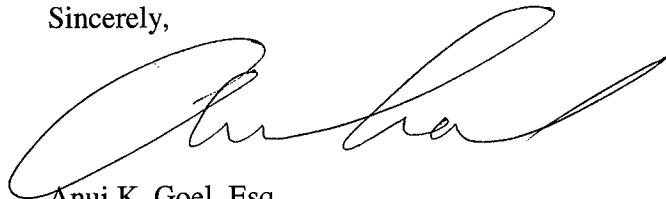
It is important to note that the LEED/GGHC criteria are a national certification that providers voluntarily choose to incorporate in their operations for all new construction. Providers seriously consider what level of costs they can continue to contribute to current operations as well as toward new construction or renovation projects. The Department's DoN Guidelines are a mandatory requirement that will force many providers, including community providers, to choose now what level of environmentally friendly operational practices should they continue to fund as well as those GGHC/LEED criteria that must be included in the overall cost of the capital project to meet the Department's requirement. **To that end, we strongly urge the Department to establish a workgroup of providers and advocates, prior to our proposed January 1, 2009 effective date, which will develop a mechanism or a point system allowing providers to include their current environmentally friendly operational practices in the overall plan review as a credit or additional points toward the compliance threshold.**

Not to belabor the point, but hospitals continue to work with several advocacy groups to develop alternative operational practices to ensure the healthiest and least environmentally harmful facilities. Providers have been implementing these and other such operational changes prior to the filing of their DoN capital needs project application. Given that the goals of the proposed guidelines are to ensure that all health care facilities meet environmentally friendly design criteria, we strongly encourage the Department to consider and develop this process.

Fourth, we highly encourage the Department to better define in the proposed regulations, the types of "ancillary...or other building types" that will also need to meet these guidelines. There is no clear definition or understanding of what type of providers this definition is intended to affect and, as such, better clarity is needed for this section of the guidelines.

Should you have any questions about our comments, please do not hesitate to contact me at (781) 262-6034. MHA looks forward to working with the Department in finalizing these guidelines.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anuj K. Goel', with a stylized, flowing script.

Anuj K. Goel, Esq.
Senior Director, Regulations and Staff Counsel